



## **AGENDA for the EPA/CDPHE/Conservation Community Meeting on 2/7/23**

### **Conservation Community Points for Discussion:**

#### **PEER**

- **Minor sources cannot “cause or contribute” to NAAQS violations**

There is confusion on the standard used for issuing minor source permits (See the EPA July 2022 report, fnnt 56 pointing out the missing word “contribute” in the state regs, and CDPHE Dec. 9, 2022 letter, number 2 – “interfering” is the language found in 40 CFR 51.16.)

The Colorado regulations currently require that CDPHE grant a permit if the new source “will not cause an exceedance of the NAAQS.” 5 CCR 10001-5, Part B, III.D.1.c. The state regulations do not correspond to the regulations of the CAA.

In codifying Appendix W, EPA made clear that its modeling guidelines are relevant to both major sources subject to NSR **and minor sources** subject to permitting programs established in a SIP. 60 Fed. Reg. 40465 (Aug. 9, 1995) (citing both 40 CFR 51.160 as well as 40 CFR 52.21)

Appendix W uses the standard of “cause or contribute” at 9.2.3. See also EPA’s minor source permitting program in Indian Country-- which requires verification that minor sources “do not cause or contribute to the NAAQS.” 71 Fed. Reg. 48,696, 48,704 (Aug. 21, 2006).

**Solution:** The SIP needs to be amended to require that minor sources do not “cause or contribute” to NAAQS violations.

- **CDPHE should prepare a cumulative 1-hr NO<sub>2</sub> and PM<sub>2.5</sub> NAAQS modeling study of the ozone NAA & a PSD Increment study of the ozone NAA**

About 2,000 minor source permits per year were issued during the last decade without any NAAQS verification. This is one of EPA's report findings in the response to the Whistleblower complaint. How will CDPHE address all the potential 1-hr NO<sub>2</sub> and PM<sub>2.5</sub> NAAQS violations (and also PSD Increment violations) that most likely exist in the ozone NAA as a result of those thousands of deficient permits issued over the years?

**Solution:** We suggest that CDPHE should conduct, with EPA oversight, a cumulative 1-hr NO<sub>2</sub> and PM<sub>2.5</sub> NAAQS modeling study of the ozone NAA, and separately a PSD Increment study of the ozone NAA. This would include evaluating PSD Increments for NO<sub>2</sub>, SO<sub>2</sub>, PM 10 and PM 2.5.

We recommend that the analysis to be performed inside the ozone NAA because that area is very crowded with thousands of permits issued over the last 10-12 years without any NAAQS assessment. Based on the results CDPHE should come up with a plan that includes deadlines, to

fix all the permits of the sources identified as causing modeled NAAQS violations, and also with a plan to address PSD Increment violations.

- **Inadequate Resources at CDPHE**

The state claims to have limited resources to spend time on each permit so additional NAAQS verifications and a public comment period would be burdensome. It is true that the state charges by the hour to permit applicants, so it might appear to the public and maybe to EPA that there could be more resources by hiring more staff whose salaries would be paid for by those hourly fees. However, every new position at CDPHE has to be approved by the legislature. The air division is not at liberty to simply hire more people to handle the review or the modeling of more permits, even if the funding would be available through the hourly fees. In practice, the staff dedicated to reviewing permits is fixed thus creating the situation of having limited resources.

**Solution:** We request that EPA revisit the infrastructure SIP's provision regarding Colorado having adequate resources. In the interim, we request that CDPHE focus on DIC communities and the ozone NAA until the legislature approves the increase in capacity for the state modeling unit. All permits that have been issued since 2010 within the ozone NAA and near DIC communities should be prioritized by the CDPHE for review and have a NAAQS compliance demonstration.

## **CBD**

- **General Permits**

CDPHE has known for years about the defects in the 11 permits presented as examples by the whistleblowers.

**Solution:** Going forward, we request that CDPHE present a plan, with EPA oversight, that includes deadlines to ensure that all general permits issued are protective of the NAAQS, that sufficient documentation is included in the permit records showing the NAAQS compliance determination, and that those records are made public. Otherwise, without addressing this problem the general permits should stopped being issued. In their current form they do not protect air quality and seem to be merely an administrative step to collect a fee when companies get an automated, pre-approved permit.

- **Breaking up projects into pieces for modeling determinations to circumvent the NAAQS**

CDPHE needs to stop the breaking up projects into pieces for modeling determinations to circumvent the NAAQS. The modeling determination has to be based on the stationary source, not individual emission units. The Cripple Creek & Victor mine permit is a perfect example with the recent proposed permit being for a piece of the larger project permitted deficiently in 2019-2020.

We have seen multiple general permits issued at the same time and at the same facility for individual pieces of equipment. Though the emissions of each piece of equipment may be below the modeling threshold, the threshold would have been exceeded if the entire facility had been treated as a single project under a single permit. At that point a NAAQS verification/modeling would have been required.

- **Facilities with prior NAAQS violations should perform a NAAQ compliance demonstration**

**Solution:** Modeling determinations for well pads should be made on the combined group of sources, not individual sources.

Where there is evidence of prior NAAQS violations at large facilities, for example facilities like Suncor and the Cripple Creek & Victor mine, CDPHE should exercise its authority to request a NAAQS compliance demonstration even in cases of projects with small emissions. Though the facility may argue that the small project by itself doesn't exceed the modeling threshold or the NAAQS, we urge the state to not ignore the evidence of pre-existing violations.

## **Earthjustice**

- **Public Comment Requirement for all minor source permits**

Minor modifications to major sources are effectively unreviewable. Reg. 3 pushes ALL modifications of Title V sources to the Title V modification process and only adds the modifications at the time of Title V renewal. Then, in response to comments, the Division claims that minor modifications cannot be challenged or addressed at Title V renewal. So, it's the Division's position that the public does not need to receive any public notice of modifications and has no right to public comment on the modifications, regardless of the nature or number of those modifications.

**Solution:** The State should amend CO Regulation 3 to add a public comment requirement to all minor source permits. 40 C.F.R. 51.161 requires the opportunity for public comment on ALL construction or modification, regardless of the magnitude of the emissions change. (With the understanding that there can be an exception for administrative modifications – like a name change or transfer of ownership).

- **Source Specific Ozone Modeling**
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How is the state satisfying its obligation to determine that individual permitting actions will not cause or contribute to ozone NAAQS violations since the state has said it will not perform source-specific ozone modeling?

- **SIP call**

We request that EPA issue a SIP call with regard to minor source permitting to:

- (1) Require public notice of all minor source permits except administrative modifications and;

- (2) Require that minor sources not contribute, in addition to not cause, NAAQS violations, and;
- (3) Require that minor sources not violate increments.